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IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

No. 586

MISSISSIPPI RIVER FUEL CORPORATION, *Petitioner*,

v.

FEDERAL POWER COMMISSION, ILLINOIS POWER COMPANY, LACLEDE GAS COMPANY, AND MISSOURI GAS COMPANY, *Respondents*.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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TABLE OF CONTENTS

	Page
Opinions Below	2
Jurisdiction	2
Questions Presented	2
Statute Involved	2
Statement	3
Reasons for Granting the Writ	7
Conclusion	18
Appendix A	1a
Appendix B	16a
Appendix C	19a

TABLE OF CITATIONS

Court Decisions:

Bel Oil Corp. v. F.P.C., 255 F. 2d 548 (C.A. 5, 1958), *cert. denied*, 358 U.S. 804 (1958)	11
Cities Service Gas Producing Co. v. F.P.C., 233 F. 2d 726 (C.A. 10, 1955), *cert. denied*, 350 U.S. 911 (1956)	11
Episcopal Theological Seminary v. F.P.C., 269 F. 2d 288 (C.A.D.C., 1959), *cert. denied*, 361 U.S. 895 (1959)	11
F.P.C. v. Hope Natural Gas Co., 320 U.S. 591 (1944)	10
Hope Natural Gas Co. v. F.P.C., 196 F. 2d 803 (C.A. 4, 1952)	10
Mississippi Power & Light Co. v. Memphis Natural Gas Co., 162 F. 2d 388 (C.A. 5, 1947), *cert. denied*: 332 U.S. 770 (1947)	11
Mississippi River Fuel Corp. v. F.P.C., 121 F. 2d 159 (C.A. 8, 1941)	11
Mississippi River Fuel Corp. v. F.P.C., 202 F. 2d 899 (C.A. 3, 1953)	14

Page

Mississippi River Fuel Corp. v. *F.P.C.*, 252 F. 2d 619 (C.A.D.C., 1957), *cert. denied*, 355 U.S. 904 (1957) 5
Phillips Petroleum Co. v. *Wisconsin*, 347 U.S. 672 (1954) 9, 12
Ruiz v. *Electrical Research Products*, 57 F. 2d 639 (C.A. 1, 1932) 16

Federal Power Commission Cases:

Phillips Petroleum Company, F.P.C. Opinion No. 338, issued September 28, 1950, mimeo p. 9 10

Statutes:

The Natural Gas Act, 52 Stat. 821 (1938) as amended, 15 U.S.C. 717 *et seq.*

Section 4(c) 16a
Section 4(d) 2, 7, 11, 12, 13, 16a
Section 4(e) 7, 13, 16a
Section 5(a) 18a

Miscellaneous:

26th Annual Report of the Federal Power Commission (1959) 7, 8

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MISSISSIPPI RIVER FUEL CORPORATION, *Petitioner*,

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FEDERAL POWER COMMISSION, ILLINOIS POWER COMPANY, LACLEDE GAS COMPANY, AND MIDSOUTH GAS COMPANY, *Respondents*.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Mississippi River Fuel Corporation prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit entered in the above-entitled case on June 30, 1960.

OPINIONS BELOW

The opinion of the Court of Appeals (App. A., *infra*, pp. 1a-14a) is reported at 281 F. 2d 918. The order of the Federal Power Commission, issued January 23, 1959 (R. 164-176), is reported at 21 F.P.C. 48.

JURISDICTION

The judgment of the Court of Appeals was entered June 30, 1960 (App. A., *infra*, pp. 14a-15a). A petition for rehearing, timely filed, was denied on September 19, 1960 (App. A., *infra*, p. 15a). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1) and Section 19(b) of the Natural Gas Act, 15 U.S.C. 717r(b).

QUESTIONS PRESENTED

1. Where an agreement between a natural gas company subject to regulation under the Natural Gas Act and its utility customers provides for the filing of new rates upon the happening of certain events in the future, are the rates of the natural gas company changed automatically upon the happening of these events and without compliance with the notice and filing provisions of Section 4(d) of the Act?

2. May the Federal Power Commission, in determining a refund for a past period of time, refuse to take into account the actual events of that period and thereby bestow upon certain utility customers, and at a pipeline company's expense, an unwarranted windfall of over $2,000,000?

3. Under the Natural Gas Act, may the Federal Power Commission without notice or hearing order a natural gas company to file new rate schedules retroactively reducing its rates for a past period?

STATUTE INVOLVED

The pertinent provisions of the Natural Gas Act, 52 Stat. 821 (1938), as amended, 15 U.S.C. 717 *et seq.*, are set forth in Appendix B, *infra*, pp. 16a-18a.

STATEMENT

This case involves an order of the Federal Power Commission issued January 23, 1959 (R. 164-176), directing Mississippi River Fuel Corporation retroactively to reduce rates theretofore collected from its utility customers for the period from November 8, 1955 to November 1, 1958, and to make refunds to such customers based on that rate reduction.[1]

In 1953 Mississippi filed with the Commission an increased rate for gas sold to its utility customers (R. 55-78). The utility customers opposed this rate increase, but Mississippi and the customers negotiated a settlement agreement fixing a new rate, which the Commission approved on June 3, 1953 (R. 92-112) 12 F.P.C. 151.

At the time of the settlement agreement, and continually thereafter, Mississippi was buying most of its gas from United Gas Pipe Line Company whose rates to Mississippi were the subject of rate proceedings then pending.[2] To take care of the possibility that United's rates to Mississippi might be reduced in those proceedings, the settlement agreement required Mississippi to "make refunds and file changes" in its settlement rate if United was required by a final order "to make any refunds or rate reductions to Mississippi" in those

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[1] Mississippi is a natural gas pipeline company which is, in effect, a wholesaler of gas. The utility customers are, primarily, companies which retail to domestic, commercial and industrial consumers the gas they buy from Mississippi. Mississippi is regulated by the Federal Power Commission under the Natural Gas Act and the utility companies are regulated by state commissions.

[2] Docket Nos. G-1142 and G-2019.

proceedings (R. 110). Paragraph VI of the settlement agreement provided (R. 100):

> If [United] is required * * * in the proceedings in Commission, Docket No. G-2019 to refund to Mississippi any part of the charges now being collected under bond, such portion, if any, of such refund attributable to natural gas purchased from United by Mississippi * * * and resold to the utility customers of Mississippi, unless otherwise ordered by the Commission, shall be refunded to such utility customers. * * *

Similarly, Paragraph VII stated (R. 101):

> If United is required * * * in the proceedings in Commission Docket Nos. G-1142 and G-2019, or either of them, to make any reduction in the rates to be charged or collected for natural gas sold by United to Mississippi, then Mississippi, unless otherwise ordered by the Commission, shall file with the Commission changes in its Rate Schedule F-1 [settlement rate] to reduce the rates therein provided so as to pass on to its utility customers the proper amount * * * of any such rate reduction ordered and made effective by the Commission in respect of United's rates. * * *

Paragraphs VI and VII set forth the mechanics for determining the amount of refund or rate reduction (R. 100-102). Under Paragraph VII the rate reduction to be passed on was to be "*attributable to reduced costs of gas purchased by Mississippi from United*" (R. 101).[3] In dealing with certain rate structure problems, the agreement provided for variations "to the extent necessary to carry out the purpose of having Mississippi *pass on to its utility customers only the*

[3] Italics supplied throughout unless otherwise noted.

proper proportion of any such over-all reduction of United's rates" (R. 102).

On November 8, 1955, the Commission issued an order in the United rate proceedings reducing its rate to Mississippi. Mississippi was not satisfied with the order and sought judicial review; and on July 8, 1957, the Court of Appeals remanded the case for further proceedings. *Mississippi River Fuel Corp.* v. *F.P.C.*, 252 F. 2d 619 (C.A.D.C., 1957), *cert. denied*, 355 U.S. 904 (1957). On remand to the Commission, United submitted evidence required by the Court's mandate, and the Commission on September 11, 1958, entered its final order reducing United's rate to Mississippi (R. 244-256). This reduced rate was made effective from November 8, 1955 (the date of the original Commission order) to April 1, 1956, when another United rate increase had become effective (R. 234). Thus, Mississippi's benefits from the reduced United rate were, as the court below recognized (App. A., *infra*, p. 6a), terminated as of April 1, 1956. In its final order of September 11, 1958, the Commission noted that under the reduced rate thus approved, "the total subject to refund by Mississippi [to its customers] through March 31, 1956, is $300,726" (R. 253, fn. 7).

The order reducing United's rate had the effect of triggering Mississippi's obligation under the 1953 settlement to pass on to the utility customers the benefits Mississippi received from the reduced United rate. Accordingly, Mississippi on October 20, 1958, advised the Commission that it proposed to make a refund to its utility customers for the period from November 8, 1955 to April 1, 1956, the period during which it had received benefits from the United rate reduction (R. 113-122). The refund thus proposed aggregated about